

APPELLATE DIVISION

The Appellate Division is responsible for overseeing all appellate work filed by the U.S. Attorney's Office in the Ninth Circuit Court of Appeals, including writing appellate briefs and participating in oral arguments. The Appellate Section acts as liaison with the U.S. Department of Justice and Solicitor General's Office on appellate matters, and handles special projects at the direction of the United States Attorney. The cases listed below are Ninth Circuit or Supreme Court decisions having a direct impact on the cases handled by the District of Arizona.

The U.S. Supreme Court handed down two significant cases. One, *United States v. Billy Jo Lara*, impacts the exercise by Indian tribes criminal jurisdiction over non-member Indians and the other *United States v. Crawford*, impacts all criminal proceedings, including Indian Country crimes.

UNITED STATES v. BILLY JO LARA 124 S. Ct. 1628 (2004)

In this case, the Supreme Court held that: (1) source of tribe's power to prosecute and punish a non-member Indian defendant for violence to a policeman was inherent tribal sovereignty rather than delegated federal authority; (2) Congress possessed constitutional power to lift or *relax* restrictions on Indian tribes' criminal jurisdiction over nonmember Indians that political branches of government had previously imposed (*my emphasis*); and (3) the Double Jeopardy Clause could not bar federal prosecution of defendant for assaulting a federal officer after Indian tribe's prosecution and punishment of him for violence to a policeman, absent any showing that the source of the tribal prosecution was federal power.

Lara, an Indian who is not a member of the Spirit Lake Tribe, ignored the Tribe's order excluding him from its reservation. During the tribal booking process, he struck a federal officer. He pleaded guilty in Tribal Court to the crime of violence to a policeman. The U.S. Attorney's Office then charged him with the federal crime of assaulting a federal officer. Lara filed a Motion to Dismiss claiming that elements of that crime mirrored elements of his tribal crime. Therefore, he was protected by the Double Jeopardy Clause. The United States argued that the Clause does not bar successive prosecutions by separate sovereigns, and that this "dual sovereignty" doctrine determined the outcome. The United States noted that this Court has held that a tribe acts as a separate sovereign in prosecuting its own members, *United States v. Wheeler*, 435 U.S. 313, 318, 322-323, 98 S.Ct. 1079, 55 L.Ed.2d 303; that, after this Court ruled that a tribe lacks sovereign authority to prosecute nonmember Indians, see *Duro v. Reina*, 495 U.S. 676, 679, 110 S. Ct. 2053, 109 L.Ed.2d 693, Congress specifically authorized such prosecutions; and that, because this statute enlarges the

APPELLATE DIVISION

tribes' self-government powers to include "the inherent power of Indian tribes ... to exercise criminal jurisdiction over all Indians," 25 U.S.C. § 1301(2), the Tribe here had exercised its own tribal authority, not delegated federal authority. Accepting this argument, the Magistrate Judge rejected Lara's double jeopardy claim. The en banc Eighth Circuit reversed, holding that the "dual sovereignty" doctrine did not apply because the Tribal Court was exercising a federal prosecutorial power, and, thus, the Double Jeopardy Clause barred the second prosecution. The Supreme Court Reversed. However, it left open the Equal Protection Act challenge to Indian criminal jurisdiction over non-member Indians.

UNITED STATES v. CRAWFORD

124 S. Ct. 1354 (2004)

The Supreme Court held that, where the government offers at trial hearsay evidence that is "testimonial" in nature, the Confrontation Clause of the Sixth Amendment requires actual confrontation, i.e., cross-examination, regardless of how reliable the statement may be. In so holding, the Court repudiated the general framework set forth in *Ohio v. Roberts*, 448 U.S. 56 (1980), for analyzing the admissibility of "testimonial" hearsay; henceforth a judicial determination that a testimonial hearsay statement is "reliable" is not sufficient to satisfy the Sixth Amendment. "Testimonial" hearsay clearly includes prior testimony from a hearing, as well as sworn and unsworn statements made during police interrogations. It does not include off-hand, overheard remarks, casual remarks to acquaintances, business records, co-conspirator statements, and statements unwittingly made to a government informant. Similarly, testimonial hearsay should not be interpreted as applying to statements made to civilians, such as private investigators, crisis counselors, and treating physicians, and statements voluntarily made to governmental officers.

UNITED STATES v. DOE

366 F.3d 1069 (2004)

The Ninth Circuit Court of Appeals addressed and reversed a long-standing procedure affecting the Federal Juvenile Delinquency Act procedure. It held that the 30 day time limit of the speedy trial provision of the Act began to run from the date upon which federal detention was begun on the charges of delinquency for which the juvenile was in custody pending trial. In issuing its ruling; the Ninth Circuit overruled *United States v. Andy*, 549 F.2d 1281 (9th Cir. 1997) holding that the 30 day time limit began to run from the date upon which federal charges are filed or when the federal government could have certified the juvenile delinquency charge.

APPELLATE DIVISION



UNITED STATES v. HARRISON

CR-02-635-PHX-SRB (9th Cir. No. 03-10200)

The *United States v. Harrison* district court case implicates the Indian Civil Rights Act Tribal “Miranda.” In *United States v. Harrison*, U.S. District Court Judge Bolton relied on the *San Juan-Cruz*, 314 F.3d 384 (9th Cir. 2002)(an immigration case involving administrative and criminal proceedings) rationale to grant a motion to suppress the defendant’s admission to a Major Crimes Act violation. In *Harrison*, upon arrest by tribal criminal investigators, the defendant was informed of his ICRA Tribal “*Miranda*” rights which included a statement that if he chose to have legal representation, he would have to pay for such representation. Thereafter, an investigator explained that should the matter be prosecuted federally, a lawyer would be appointed to represent the defendant. The defendant then made admissions to the crime. Judge Bolton held that recitation of the ICRA Miranda rights was confusing and therefore ordered the defendant’s statements suppressed. The federal government appealed this Order to the Ninth Circuit. The Ninth Circuit upheld the Order.